IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4328 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESH OMPRAKASH SOOD & 4 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MEHUL S SHAH for Petitioner(s) : 1,MR SURESH M SHAH for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2 - 5.
Ms.Archana Raval, A.G.P for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 05/05/2006

CAV JUDGMENT

1. By means of filing this petition under Article 226 of the Constitution of India, the petitioners have prayed to quash and set

aside the impugned orders Annexures “B” and “C” to the petition i.e. Order Annexure “B” passed by the respondent no.2-Collector, Valsad, on 18-11-1996 in Review Application no.1 of 1996 and order Annexure “C” passed by the respondent no.1-The Additional Chief Secretary (Appeals), Government of Gujarat, Ahmedabad on 20-3-1999 in Revision Application no.55 of 1999 whereby the order Annexure “B”passed by the Collector came to be confirmed.

2. The gist of the facts of the case leading to the filing of the present petition are that the deceased Ashadevi-mother of the present petitioners who are legal heirs happened to purchase lands S.No.449, 448 and 190/A admeasuring 20 acres and 28 guntas by a registered sale deed dated 19-6-1959 and upon due verification by the authority concerned mutation entry no.1087 was made in her name on 9-12-1971 and after the death of said Ashadevi mutation entry was made in the name of the present petitioners by inheritance. It is the case of the petitioners that their mother deceased Ashadevi and they had spent huge amount of money for developing the said lands. That after a long lapse of 27 years from the date of purchase

of the said lands, the respondent no.2 issued show cause notice dated 6-1-1996 to the vendors as also in the name of their deceased mother Ashadevi by registering a Review Case no.1 of 1996 and calling upon them to show cause why the mutation entry no.1087 should not be cancelled on the ground that the purchaser was not an agriculturist.

3. The present petitioners who are legal heirs of deceased Ashadevi therefore filed written objections stating therein that the notice was issued against a dead person as their mother Ashadevi had died long back on 19-12-1991, that the deceased Ashadevi was an agriculturist on the date of purchase and that she was also originally holding agricultural lands at Madhya Pradesh, that the lands in question are mutuated by entry no.1116 on 9-4-1994 in their names, and therefore the review proceedings should be dropped. Thereupon the respondent no.2 passed an order in Review Case no.1 of 1996 whereby mutation entry no.1087 dated 9-12-1971 was cancelled by holding that the same is against the provisions of Rule 36 of the Rules and Section 63 of the Bombay

Tenancy Act as the petitioner was non agriculturist and a direction to initiate proceedings under Section 84-C of the Bombay Tenancy Act was also issued. Feeling aggrieved by and dissatisfied with the said order of the respondent no.2, the petitioners moved Revision Application to the respondent no.1 who by his order dated 20-3-1999 rejected the same.

4. It is against the aforesaid two orders that the present petitioners have approached this Court by way of the present Special Civil Application.

5. Heard learned Counsel Mr. Shah for the petitioner and learned A.G.P. Ms. Archana Raval for the respondents.

6. The learned Counsel for the petitioner has mainly contested the petition on two grounds, namely, (1) that there is a bar of huge delay and laches in holding the proceedings of review application as regards mutation entry of 1971 in 1996 and in cancelling the mutation entry and (2) that after the purchase of the lands in question by their mother deceased Ashadevi they had spend huge amounts for development of the said lands.

7. The learned A.G.P. on the other had submitted that the revision of entries are made by the respondent-authorities in consonance with the provisions of Rule 108(6) of the Land Revenue Rules, 1972 and that the authorities have not committed any error in passing the impugned orders.

8. Considering the facts emerging from the record of the instant case, it is amply clear that the show cause notice came to be issued after lapse of a considerably long time since the mutation entries in respect of the lands in question were effected as back as in the year 1971 while the show cause notice for review came to be issued as late as in January 1996.

9. Upon a close scrutiny of the order passed by the Collector it is found that the Collector has merely stated that the purchaser of the lands in question Ashadevi Sood was not an agriculturist, and therefore, the mutation entry no.1087 made in the record of rights was cancelled and the sale transaction in question was set aside. However, the Collector has neither assigned any reason while passing the impugned order nor is there anything on record to prima

facie establish that Ashadevi Sood was not an agriculturist. Not only that the mutation entry was sanctioned by the competent authority in December, 1971, the registered sale deed is dated June 19,1969 and the lands in question were purchased by Ashadevi Sood for a consideration of Rs.95,000/- and had spent huge amount towards development of the same. Considering all these aspects it becomes clear that the Collector has not initiated the proceedings within a reasonable time.

10. At this stage, it would be appropriate to refer to the decision rendered by the Apex Court in the case of STATE OF GUJARAT V. PATEL RAGHAV NATHA & ORS (1969 G.L.R 992 (SC) wherein the Supreme Court while dealing with the question of delay has considered the question whether the Commissioner can revise an order made under Sec.65 of the Bombay Land Revenue Code at any time? The Apex Court pointed out that there is no period of limitation prescribed under Section 211. But from the plain reading of this Section, the Court pointed out that the power must be exercised within reasonable time and the length of reasonable time

must be determined by the facts of the case and the nature of the order which is being revised.

11. Now, in the instant case, it is pertinent to note that the petitioner in paragraph 1 of the petitioners have specifically averred that they and their mother deceased Ashadevi Sood had made large investments after having acquired the property. In PATEL RAGHAV NATHA's case (supra) in paragraph 12 of the judgment, it has been observed as under:

"It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under Section 65 of the Code if the Collector does not inform the application of his decision n the application within a period of three months the permission applied for shall be deemed to have been granted. This Section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must

exercise his revisional powers within a few months of the order of the Collector. This is a reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case, the Commissioner set aside the order of the Collector on October 12, 1961 i.e. more than a year after the order, and it seems to us that this order was passed too late.

11. Reference in this connection may also be had to the decision rendered by the learned Single Judge of this Court in the case of HARSHADBHAI DAHYABHAI DESAI V. STATE OF GUJARAT reported in 2000(4) G.L.R 3403 wherein in similar set of facts, the Court after considering the action on the part of the authorities in exercising powers under the Act after a period of four years by issuing notice to the concerned parties for showing cause why the transaction entered into by them should not be held to be null and void came to the conclusion that such action on the part of the authorities is unreasonable.

12. Thus, considering the facts situation as narrated above, and in view of the settled proposition of law as extracted hereinabove, I do not find any force in the submission made by the learned A.G.P. I am of the considered opinion that the authority concerned ought to have passed the order cancelling the mutation entries within a reasonable time and the order in question having been passed at such a belated stage i.e. after a long lapse of 25 years cannot be sustained in the eye of law. Moreover, the authority while passing the impugned order ought to have assigned reasons and in absence of any reason worth the name, the impugned order is bad in law and requires to be quashed and set asideat the threshold.

13. In the result, the petition is required to be allowed. The petition is accordingly allowed with no orders as to costs. The impugned orders at Annexures “B” and “C” to the petition are hereby quashed and set aside. Rule is made absolute.

(M.D..Shah,J.)

jrv-lee